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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,990	03/11/2004	Raymond J. Archacki JR.	210_657	5162
20874	7590	05/27/2005		
			EXAMINER	
			EMDADI, KAMRAN	
			ART UNIT	PAPER NUMBER
			2667	

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/797,990	ARCHACKI, RAYMOND J.
	Examiner	Art Unit
	Kamran Emdadi	2667

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11 March 2004.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-20 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Objections

Claim 1 is objected to because of the following informalities: the phrase "those devices" on line 9 of claim 1 should recite "those 'remote' devices". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 10, the last line of claim 10 recites: "a more robust system of communication". This phrase contains the adjective "robust" which is a relative term that has no foundation for its level of accuracy. The term is not defined in the specification in such a way that one of ordinary skill could understand the intended meaning of the word or its accompanying phrase. Appropriate action is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7-10, 12, 15 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briancon (U.S. Patent No. 6,266,513) in view of Simbirski et al. (U.S. Patent No. 6,895,014).

Regarding claims 1, 10, 12 and 15, Briancon teaches a data messaging communications system that includes a wireless transmitter 223 (see figure 2) configured for two-way data messaging. The data system includes sending message data from a system controller source that also receives acknowledgment messages from a terminal device (see column 5, lines 15-20). The data system also includes a means for re-transmitting a message over an alternative path when a previously sent data message fails to reach an originally intended target terminal device (see column 9, lines 40-47). Briancon is however, silent regarding recording a list of devices that do not receive data messages.

Simbirski teaches a polling communications system that includes a plurality of wireless terminals and a central base station. The system further includes a dynamically updating polling system that records a list of devices that do not receive the broadcast polling message (see figures 10-18, e.g., 1022, 1122...).

The combination of these two references teaches all of the features recited in claims 1, 10, 12 and 15. Furthermore, motivation to combine these references is evident from the discussions present in the background portions of the respective specifications. For instance, Briancon discloses the need for reducing the amount of re-transmission efforts for missing message reconciliation data (see column 1, lines 54-60). Similarly, Simbirski discloses the need to reduce the amount of polling messages sent, in other words reducing the amount of unnecessary polling. The reduction of unnecessary data transfer in these two systems is evidence of motivation to combine these two references to arrive at the features recited in claims 1, 10, 12 and 15.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine these two references and arrive at the invention disclosed in claims 1, 10, 12 and 15.

Regarding claims 7-9 and 19-20, Simbirski teaches using the out-of-service list of devices as a comparison parameter for obtaining a level of performance. A counter is initialized based on the number of listed out-of-service devices. Similarly, a re-polling operation is performed based on the same parameter (see 1022-1030 of figure 10).

Claims 2-6, 11, 13-14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briancon in view of Simbirski as applied to claims 1, 10, 12, 15, 7-9 and 19-20 above, and further in view of Sinclair (U.S. Patent Publication No. 2003/0073461).

Neither Briancon nor Simbirski teaches controlling a thermostat via the wireless communications systems disclosed therein. Sinclair, however, discloses a wireless communications system that operates mainly for the control of specific remote devices. The device control operations of Sinclair explicitly defines controlling a thermostat, and broadcast communications in addition to acknowledgement messages, similar to the communications systems of Briancon and Simbirski (see [0157, 0159 and 0161-0163]). Also, the Internet is used as a medium to control the thermostat remotely (see [0167]).

Motivation to combine Sinclair with the other two references is evident from the discussion present in [0169] of Sinclair, which discusses the flexibility of accommodating the invention disclosed in Sinclair with various types of wireless networking needs. Additionally, Sinclair discloses the desire to provide a backup system of wireless control systems in the event of a power failure, which is a limiting factor in hardwired and land line control systems (see [0007]). The systems disclosed in Briancon and Simbirski also disclose the desire to have a more robust and efficient means for communications. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine these two references and arrive at the invention disclosed in claims 2-6, 11, 13-14 and 16-18.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamran Emdadi whose telephone number is 571-272-6047. The examiner can normally be reached M-F between the hours of 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kamran Emdadi

May 23, 2005


CHI PHAM
SUPERVISORY PATENT EXAMINER
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